

**FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
and)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the)	
Telecommunications Act of 1996)	

COMMENTS OF FOCAL COMMUNICATIONS CORPORATION

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SUMMARY

In this proceeding, the Commission has a historic opportunity to strengthen and broaden its collocation requirements to ensure that CLECs are able to fully compete with the ILECs in the provisioning of advanced services. Although the D.C. Circuit vacated and remanded some of the Commission's collocation rules adopted in the *Advanced Services Order*, the Court did not wholly reject the Commission's rules. Instead, the Court requested the Commission to further expand its analysis and explain how such broadened collocation rules are consistent with the 1996 Act.

The Commission should utilize this opportunity to provide the analysis the Court requested. As the Commission has long recognized, the underlying goal of the 1996 Act is to promote competition. Congress enacted Section 251(c)(6) to grant CLECs the opportunity to collocate in the ILECs' premises. The need to collocate was understood to be essential to ensuring that CLECs have the ability to compete. In response to the 1996 Act, the Commission adopted collocation rules in its initial *Local Competition Order*.

Since the adoption of those initial collocation rules, broadband services have become more prevalent and more CLECs and ILECs are seeking to provide those services. However, the advent of advanced services requires modification to the original collocation rules, which the Commission recognized in the *Advanced Services Order*.

Although the D.C. Circuit remanded several of the Commission's collocation rules adopted in the *Advanced Services Order*, the Commission now has the opportunity to further expand its analysis as to why such regulations are "necessary." The Commission can adopt such broad collocation regulations by embracing an expansive and flexible definition of the word "necessary" with regard to Section 251(c)(6). In defining the word "necessary" the Commission

should consider a number of factors, including the language of the relevant sections of the 1996 Act and the goals of the 1996 Act. Of substantial importance to the Commission's definition of "necessary" should be ensuring that the rules permit robust competition in the provision of advanced service. Focal suggests a definition of "necessary," based on the language and goals of the 1996 Act as "equipment that is used in the provision of telecommunications services, that is technically feasible to be deployed at the ILEC's premises, and would facilitate CLECs' ability to compete in their provision of services."

Using this definition of "necessary," the Commission should require ILECs to permit CLECs to collocate multifunctional equipment. Because advanced services have changed both the equipment and the functions of equipment CLECs use, the original collocation rules are no longer adequate. Equipment such as DSLAMs, ATM multiplexers and remote switching modules perform transmission and multiplexing functions as well as switching functions. Such equipment must be able to be collocated in the ILECs' premises in order for CLECs to be able to provision such services in competition with the ILECs. Accordingly, such equipment plainly meets the definition of "necessary." As Focal explains in its comments, any equipment that the ILECs place in their premises should presumptively meet the "necessary" standard.

Moreover, CLECs must be able to provision their own cross-connects. The Commission has the authority to order ILECs to permit CLEC provisioned cross-connects pursuant to a number of sections of the Act. First cross-connects are plainly "necessary" for interconnection under Section 251(c)(6) of the Act. Cross-connects are used to provide telecommunications services and are technically feasible to be deployed at the ILECs' premises. Cross-connects are also essential to CLECs' ability to effectively compete. Without the ability to cross-connect, the only cost effective means of interoffice transport would be the ILEC. CLECs would either have

to use the ILEC for interoffice transport or undergo substantial time and expense pulling fiber through various manholes to utilize other carriers. The goal of the 1996 Act could hardly have been to ensure the ILECs a monopoly on interoffice transport.

Moreover, the Commission should order the ILECs to provide cross-connects as a tariffed service. The Commission has such authority pursuant to Sections 201(a) and 251(a)(1) of the Act. The Commission should require the ILECs to provide a cross-connect service, in which the ILEC provisions the cross-connect. ILECs should also be required to provide a cross-connect “hosting” service, in which the CLEC is able to place its own cable to cross-connect itself with the desired carrier. Cross-connects should also be provisioned as UNEs. Under the Commission’s “impair” standard, lack of access to cross-connects would significantly diminish a CLEC’s ability to provide services.

As the Commission recognized, access to the subloop is vital for provisioning broadband services. With the increased use of evolving technologies such as digital loop carriers and integrated digital loop carriers, collocation at the remote terminals is becoming essential for CLECs to deploy advanced services. In order to provide advanced services, CLECs must access the copper loop before it is multiplexed and transported to the central office. Accordingly, in order to access the subloops at the appropriate time, the access must be through the remote terminal. The Commission should require ILECs to provide access to all three types of remote terminals. The Commission should also require ILECs to permit adjacent construction to the remote terminals. Because access at the remote terminal is vital to the provision of advanced services, the Commission should modify its collocation rules to permit physical collocation at remote terminals even when space is available at the central office.

The provisioning of advanced services are continuing to evolve and the ILECs are deploying new network architectures, including the installation of fiber deeper into the neighborhood. These changes in the marketplace require the Commission to modify its rules concerning access to unbundled transport, loops and subloops. Such changes are necessary and timely with regard to current ILEC plans, such as Project Pronto.

The Commission must ensure that advanced services electronics and capabilities are included within the definition of the loop. In particular, line card/plug combinations as well as OCDs are essential to the provisioning of advanced services and must be included within the definition of the loop network element. Moreover, to not limit CLECs to the “flavors” of DSL provided by the ILECs, CLECs must be permitted to provision their own line cards.

The Commission should also establish new UNEs in response to the deployment of new technologies. Each optical wavelength of a fiber split by a DWDM device should be its own UNE. Constant Bit Rate (“CBR”) should be provided as a UNE and any ILEC broadband service should be provided as a UNE.

In order to ensure that CLECs are able to appropriately plan their networks, the Commission should require ILECs to give CLECs at least twelve months advance notice of a planned rollout where they will be deploying fiber loop facilities. ILECs should also be required to disclose the full range of capabilities of all the deployed equipment, including inactivated capabilities.

Finally, the Commission must require the ILECs to maintain all copper facilities in such a manner to provide a viable alternative for CLECs to access customers. ILECs should be required to maintain copper facilities for a period of at least ten years.

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COMMENTS OF FOCAL COMMUNICATIONS CORPORATION

Focal Communications Corporation (“Focal”), by its undersigned attorneys, hereby submits its comments in response to the Commission’s notices of proposed rulemakings¹ and the D.C. Circuit’s remand² of the *Advanced Services Order*.³

In this proceeding, the Commission has a historic opportunity to further develop competition in the market for advanced services. Since Congress passed the Telecommunications Act of 1996 (“the 1996 Act”) and the Commission adopted its first

¹ *Deployment of Wireline Service Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 00-297 (August 10, 2000) (“*Collocation Reconsideration Order and NPRM*”).

² *GTE Service Corp v. FCC*, 205 F.3d 416 (D.C. Cir. 2000)(“*GTE v. FCC*”).

³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, 14 FCC Rcd 4761 (1999) (“*Advanced Services Order*”), *aff’d in part and remanded in part sub. nom. GTE v. FCC*, *supra*.

collocation rules in the *Local Competition Order*⁴, there has been explosive growth and demand for advanced service offerings. Both business and residential users throughout the nation seek access to high speed Internet services. As this demand became apparent, the Commission recognized that its current collocation rules were not sufficient to promote competition in these markets. Accordingly, the Commission adopted broader collocation rules in the *Advanced Services Order*, that among other things permitted CLECs to collocate multifunctional equipment, such as DSLAMs and ATM multiplexers, and required ILECs to permit CLEC provisioned cross-connects.⁵

In this proceeding, the Commission must affirm the collocation rules promulgated in the *Advanced Services Order* and adopt new ones to ensure that the market remains open to competition upon ILEC deployment of new network architectures in providing advanced services. Although the D.C. Circuit remanded certain aspects of the Commission's *Advanced Services Order*, the Court did not dispute the underlying premise of those rules—that the implementation of advanced services requires broader collocation rules than the Commission previously adopted. Instead, the Court requested the Commission to provide further analysis and rationale as to why broader rules are “necessary” pursuant to Section 251(c)(6) of the 1996 Act.⁶

This task, while complex because of the technologies involved, should be simple to achieve. Broader collocation rules are clearly “necessary” if the goals of the 1996 Act are to be

⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499, ¶¶555-607 (1996) (“*Local Competition Order*”).

⁵ *Advanced Services Order*, at ¶¶ 25-33.

⁶ *GTE v. FCC*, 205 F.3d, at 424.

realized. The advent of advanced services requires broad and flexible collocation regulations if CLECs are to be able to effectively compete. CLECs must be able to collocate multifunctional equipment, such as DSLAMS and ATM multiplexers at the ILEC premises. This is essential to the ability of CLECs to offer advanced services and compete based on price with the ILECs. CLECs must also be able to cross-connect to other carriers at the ILEC premises through self-provisioned connections. Failing to require self-provisioned cross-connects would be contrary to the 1996 Act and would ensure that ILECs maintain a monopoly on interoffice transport. Moreover, CLECs must be able to access the subloop by collocating at the ILEC's remote terminals. Without access to the subloop, CLECs are severely limited as to the customers to which they can provide service.

Finally, the Commission must consider technologies of the future. ILEC initiatives such as in SBC's Project Pronto, are beginning to provision advanced services through the deployment of new network architectures. These new technologies provide additional opportunities and challenges for CLECs. The Commission should embrace the innovation, but adopt rules to ensure that ILECs, in deploying new technologies, are not able to unfairly disadvantage competitors, either by removing existing copper or blocking access to unbundled network elements inherent in the new devices.

I. THE COMMISSION MUST FURTHER STRENGTHEN ITS COLLOCATION RULES TO PROMOTE COMPETITION PURSUANT TO THE TELECOMMUNICATIONS ACT

As stated above, the Commission now has a historic opportunity to strengthen its collocation rules to promote competition in the advanced services industry. As the Commission has recognized, the ability of CLECs to collocate equipment is particularly important to

facilities-based competition for advanced telecommunications services. Although the D.C. Circuit vacated and remanded the Commission's rules with regard to the equipment that CLECs are permitted to collocate, the Court's reasoning was based on the Commission's definition of "necessary." The Court found that the Commission's definition of "necessary" was not supported by the 1996 Act and should be remanded for further consideration and analysis.

A. The Commission Should Adopt a Definition of "Necessary" that Incorporates CLECs' Need to Compete, the Competitive Goals and Language of the 1996 Act as well as the Ordinary and Fair Meaning of the Word

As the Court ordered, the Commission must now reevaluate and reconsider the meaning of the word "necessary" within the context of Section 251(c)(6) of the 1996 Act. The Court did not proscribe a particular definition, but permitted the Commission to arrive at its own definition after the proper analysis.⁷ Indeed, the Court stated:

We do not mean to vacate the Collocation Order to the extent that it merely requires LECs to provide collocation of competitors' equipment that is directly related to and thus necessary, required, or indispensable to 'interconnection or access to unbundled network elements.' Anything beyond this, however, demands a better explanation from the FCC.⁸

Accordingly, the Court allowed the Commission the opportunity to adopt a broader definition of "necessary," provided that the Commission supported its determination with a more comprehensive explanation.

In analyzing the proper definition of the word "necessary," the Commission must consider the competitive goals of the 1996 Act and the need for CLECs to effectively compete in

⁷ *Id.*

⁸ *Id.*

order to achieve those goals, in addition to the plain meaning of the word. The intent of Congress in passing the 1996 Act was clear—Congress intended to “provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”⁹

Obviously, there can be no competition if ILECs are permitted to utilize their monopoly status to quash competitor innovation and competition. The goal of the 1996 Act was plainly to prescribe broad rules to open the market to new entrants, not to create loopholes that would allow ILECs to delay and obstruct CLEC attempts to provision new services. In determining what types of equipment CLECs should be able to collocate, the word “necessary” must be read within the context of creating a competitive marketplace.

1. The Commission Has Discretion to Adopt Collocation Rules that Promote Competition

Notwithstanding the Court’s remand of the Commission’s previous definition of “necessary” as “used or useful” the Commission does have broad discretion to adopt a definition of “necessary” that will promote the competitive goals of the 1996 Act. Section 251(c)(6) provides that ILECs have the duty to offer “collocation of equipment necessary for interconnection or access to unbundled network elements.” As the Court noted, the legislative history is unclear as to the meaning of the word “necessary” in this section of the 1996 Act.¹⁰ Therefore, the Commission’s interpretation will be subject to deference under *Chevron U.S.A.*,

⁹ S. CONF. REP. No. 104-230, at 1 (1996).

¹⁰ *GTE v. FCC*, 205 F.3d, at 421.

Inc. v. Natural Resources Defense Council,¹¹ as long as its interpretation is reasonable and consistent with the statutory purpose.

Moreover, Section 251(c)(6) permits the Commission to require collocation on “rates, terms and conditions that are just, reasonable and nondiscriminatory.” Pursuant to this portion of Section 251(c)(6), the Commission has further authority to ensure that CLECs have collocation rights that place them on equal footing with the ILECs. Because collocation is intended by the 1996 Act to be “nondiscriminatory,” the Commission has substantial authority to place CLECs at competitive parity with the ILECs. Therefore, the Commission can consider Section 251(c)(6) in light of the equipment ILECs utilize in their networks to provide advanced services and ensure that CLECs have the ability to collocate similar equipment.

The Commission, therefore, has the authority to adopt a broad and flexible definition of “necessary” and should reject any attempt to impose a definition that would unduly restrict competition. For instance, the Commission should not adopt a definition of “necessary” similar to the definition adopted in the *UNE Remand Order*¹² with regard to proprietary network elements. In the *UNE Remand Order*, the Commission ruled that a proprietary network element is “necessary” if “lack of access to that element would, as a practical, economic, and operational matter, preclude a requesting carrier from providing the service it seeks to offer.”¹³

¹¹ 467 U.S. 837 (1984).

¹² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Report and order and Fourth further Notice of Proposed Rulemaking, CC Docket No. 96-98, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”).

¹³ *UNE Remand Order*, at ¶ 44.

This definition is too restrictive and inappropriate for Section 251(c)(6). With respect to collocation, applying this type of definition would severely restrict competition. CLECs would be required to illustrate that lack of collocation ability would preclude the provision of service, which would be overly burdensome. CLECs may still be able to provide service without collocation, but the provisioning would be so expensive and inefficient as to render the service noncompetitive with the ILEC services. The issue is not the preclusion of services, but the advancement of innovation and the offering of new services to compete with the ILECs.

More importantly, it would be inappropriate and contrary to the statutory intent of the 1996 Act to apply the *UNE Remand Order* definition of “necessary” to the definition of “necessary” in Section 251(c)(6). In the *UNE Remand Order*, the Commission interpreted the word “necessary” as it applied to *proprietary* network elements.¹⁴ The Commission was attempting to interpret a provision of the 1996 Act that intended to afford some protection to proprietary information of the ILECs. This is not a consideration with regard to collocation and therefore, it is unlikely that Congress expected the definition of necessary to be similar for Section 251(c)(6). Indeed, once a CLEC is given the ability to collocate, the CLEC is given access to the ILEC premises. The equipment the CLEC places in the space does not invoke any additional proprietary issues for the ILEC.

2. The Definition of “Necessary” Must Be Tied to the Language of the 1996 Act

As required by the D.C. Circuit, the definition of “necessary” must be tied to the language and framework of the 1996 Act. Section 251(c)(6) requires collocation of equipment “necessary for *interconnection or access to unbundled network elements* (emphasis added).”

Therefore, the definition of “necessary” for collocation must be read in light of the requirements for the provision of interconnection or unbundled network elements as described in Sections 251(c)(2) and 251(c)(3).

Section 251(c)(2) requires that ILECs provide interconnection “for the transmission and routing of telephone exchange service and exchange access . . . at any technically feasible point within the carrier’s network . . . that is at least equal in quality to that provided by the local exchange carriers to itself or to any subsidiary, affiliate . . . on rates, terms, and conditions that are just reasonable and nondiscriminatory. . . .” Similarly, Section 251(c)(3) requires that ILECs provide “for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable and nondiscriminatory”

These sections of the 1996 Act provide the basic framework within which CLECs’ collocation rights should be evaluated. Because the Section 251(c)(6) collocation requirement is essentially a vehicle for the CLECs to be able to obtain interconnection and access to UNEs, the collocation rules must be framed in a manner that would achieve the requirements of Sections 251(c)(2) and 251(c)(3). Accordingly, the language of the 1996 Act, as demonstrated by Sections 251(c)(2) and 251(c)(3), requires collocation of equipment that: (a) provides telecommunications services; (b) is technically feasible; and (c) is nondiscriminatory, meaning equal in respect to the type and quality of equipment the ILEC provides to itself or its subsidiaries or affiliates.

3. The Definition of “Necessary” Must be Flexible and Ensure that CLECs’
Have the Ability to Compete

For the goals of the 1996 Act to be realized, the Commission’s definition of “necessary” must be a flexible definition that accounts for the dynamic nature of the telecommunications industry. The Commission should not tie the definition of “necessary” to equipment in use today. Because technology is constantly evolving, the Commission’s definition of “necessary” must be able to be applied to changing technology. This is essential to ensure that competition is not hindered by legal definitions that lag behind technology. Equipment that may not even exist today may in several years be “necessary” to interconnection or access to UNEs.

For example, many years ago, nobody had a telephone in his or her home. Now it would certainly be fair to say that most people would think that a telephone is “necessary” even though there are other means to communicate. Another example of the impact of evolving technology is the Internet. It has only been in the last five to seven years that consumers and businesses have had ubiquitous access to the Internet. Now, access to the Internet, and even broadband, fast access to the Internet is commonly perceived as “necessary” for businesses and many consumers.

More importantly, in a practical and economic sense, what is “necessary” is not only defined by the requirements of running a business, but by the tools that competitors can access. There may be many tools or equipment that become “necessary” merely because of the nature of competition and the marketplace. For example, a business, such as a shoe store may be able to operate without any access to the Internet. The store would be able to use the phone and fax to place its orders and ship its goods. However, if its competitors are accessing the Internet and are able to obtain cheaper supplies in bulk over the Internet, the lack of access to the Internet would become a competitive disadvantage to the shoe store. Therefore, Internet access becomes

“necessary” to the shoe store, even though the store could technically be run without such access.

In the competitive nature of the business, without Internet access, the shoe store would not be able to compete and ultimately, prosper in its business plans because its competitors would be able to obtain cheaper supplies and therefore, would be able to offer customers better prices.

Logically, this is the same with regard to collocation. If an ILEC or its affiliate is deploying certain equipment in its network, a CLEC must be able to collocate equipment that performs the same functions in order to be competitive.

Stated even more simply, in the context of collocation, the starting point of “necessary” equipment should most importantly be defined by the equipment the ILECs utilize in their networks. Looking to the equipment the ILECs utilize is crucial. Equipment that is “necessary” for CLECs to collocate, in a practical sense is intrinsically defined by the tools its competitors have. If the ILECs place certain equipment in their premises, a CLEC would not be able to effectively compete without the same ability. Although the CLEC may be able to provide the service, without collocation of the equipment, the CLEC’s costs would increase substantially. The CLEC would have to find and pay for another location to house the equipment within the proper distance from the customer, while still paying the ILEC for the collocation space. This would create a situation where the CLEC would be incurring such substantial additional costs that it would be unable to effectively compete.

Moreover, from a practical standpoint, equipment that the ILECs place in their premises is economically necessary. Because central office and remote terminal space is limited and expensive, ILECs have an economic incentive to only use such space for equipment that is absolutely necessary. Therefore, such equipment that the ILECs place in its premises

intrinsically meets the definition of equipment “necessary” for interconnection or access to unbundled network elements.

However, the definition of “necessary” should not stop at the equipment that the ILECs use within their network. Although such equipment should presumptively be considered “necessary” under Section 251(c)(6), CLECs should be able to collocate other equipment that is “necessary” even if the ILECs are not using such equipment. Many CLECs have different network design and topology than the ILECs, with more centralized switches and distributed transport nodes, and therefore, may require different types of equipment collocated in the ILEC premises. Therefore, CLECs must be able to collocate all “necessary” equipment and should not be limited to the technology the ILECs utilize.

Accordingly, the Commission should adopt a definition of “necessary” that incorporates the language of the 1996 Act, the changing nature of technology and the competitive market in which the CLECs operate. Focal suggests that the most simple and correct definition of necessary can be derived from the language of the 1996 Act and incorporates the need for CLEC ability to compete. Accordingly, Focal suggests a definition of “necessary” as “equipment that is used in the provision of telecommunications services, that is technically feasible to be deployed at the ILEC premises, and would facilitate CLECs’ ability to compete in their provision of services.” As stated above, any equipment that the ILEC uses in its premises should presumptively meet the definition of “necessary.”

This definition is consistent with the statutory language and purpose behind Section 251(c)(6) because it encompasses the plain meaning of the word “necessary” and the language of the 1996 Act, but also takes into account the purpose of promoting competition and ensuring that

CLECs are able to effectively compete against the ILECs in their attempts to provide competitive services. By incorporating the assurance that collocation is “necessary” if it facilitates CLEC ability to compete, this definition also takes into account the equipment the ILECs are currently utilizing in their networks by allowing the Commission to require parity. The definition also permits the Commission to require collocation of other equipment that the ILECs may not utilize, but because of different network architectures, may be “necessary” for the CLECs to collocate. As explained above, “necessary” in Section 251(c)(6) is intrinsically defined by the equipment CLECs need to collocate in order to effectively compete.

B. The Commission’s Definition of “Necessary” Should Permit Collocation of a Wide Variety of Telecommunications Equipment, Including Multifunctional Equipment

As Focal stated above, the Commission should adopt a definition of “necessary” that permits CLECs to collocate “equipment that is used in the provision of telecommunications services, that is technically feasible to be deployed at the ILEC premises, and would facilitate CLECs’ ability to compete in their provision of services.” This definition would plainly require the ILECs to permit the collocation of multifunctional equipment, including DSLAMs, ATM multiplexers and remote switching modules. Such equipment meets the definition of “necessary” under Section 251(c)(6).

First, multifunctional equipment is clearly used in the provision of telecommunications services. Equipment, such as DSLAMs, ATM multiplexers and remote switching modules are essential to the provision of advanced telecommunications services and perform transmission and multiplexing functions as well as switching. Such equipment is also technically feasible to be deployed at the ILEC premises. Although ILECs will likely argue that there is not sufficient

space in the premises for that equipment, because manufacturers have been able to substantially decrease the size of such equipment, DSLAMs, ATM multiplexers and remote switching modules are all able to fit within the collocation space allocated to the CLECs.

Most importantly, DSLAMS, ATM multiplexers and remote switching modules are all utilized by the ILECs in their provision of advanced services to customers. Accordingly, this equipment should presumptively be included within the definition of “necessary.” If the ILECs are able to utilize this equipment, prohibiting CLECs from collocating such equipment would significantly disadvantage their provision of services. CLECs would be required to either refrain from utilizing such equipment, thereby using less efficient equipment, or incur substantial additional costs in the use of multifunctional products. For example, SBC plans to deploy ATM switches in its Project Pronto initiative. This technology will provide SBC with increased efficiency. According to SBC’s analysis of their Houston network, ATM switches will permit SBC to reduce the number of trunk groups by 74%.¹⁵ CLECs should be able to also access such equipment and take advantage of such efficiencies without having to incur additional costs to locate such equipment when they are already paying ILECs for collocation space. Such a result would substantially hinder competition for advanced services.

The same rationale applies with line cards. As ILECs are deploying digital loop carrier systems, integrated line cards are becoming essential to provide advanced services and other telecommunications services to customers. Line cards perform spectrum splitting functions and connect subscriber lines served by remote terminals to the rest of the telephone network. For CLECs to not be competitively disadvantaged, it is essential that they be permitted to collocate

line cards at the ILEC premises. Without the ability to collocate line cards at the ILEC premises, CLECs will be substantially hindered in their ability to serve customers in suburban and rural neighborhoods in competition with the ILECs.

Moreover, there is an economic and practical aspect to collocation space that precludes carriers from using such space for equipment that is not absolutely essential. Collocation space is extremely expensive for CLECs to lease. It wouldn't make sense for CLECs to waste such valuable space by filling it up with equipment that isn't absolutely "necessary."

In passing the 1996 Act, Congress intended to promote the development of new technologies. That goal is succeeding. Multifunctional equipment is more innovative and efficient than single-functioned equipment. It permits carriers to perform multiple tasks with one piece of technology that is smaller in size so it can easily be placed in CLEC rented collocation space. The Commission should embrace this new technology and encourage its collocation in ILEC premises, which will further competition and the goals of the 1996 Act.

II. SECTION 251 ENCOMPASSES CROSS-CONNECTS BETWEEN COLLOCATORS

Cross-connects are transmission facilities used to transport traffic between collocated carriers located within an incumbent's premises. Although the D.C. Circuit remanded the Commission's requirement that ILECs provision cross-connects, the Commission still has substantial leverage to require such services. First, cross-connects are clearly "necessary" for interconnection under Section 251(c)(6) of the Act, and therefore, the Commission should order cross-connects pursuant to the ILEC's duty to provide collocation. In addition, the Commission

¹⁵ See SBC Press Release, *SBC Announces Sweeping Broadband Initiative*, (released October 18, 1999) ("*SBC Press Release*").

has authority to order cross-connects as a tariffed service. The Commission has broad authority to require regulated carriers to offer tariffed services, and the 1996 Act provides the duty of ILECs to interconnect directly or indirectly with other carriers. Finally, the Commission could also order the provisioning of cross-connects as a UNE. Cross-connects meet the “impair” standard under the 1996 Act because lack of access to cross-connects would significantly diminish a CLEC’s ability to provide services. Moreover, the Commission should require the ILECs to permit CLEC provisioned cross-connects pursuant to the goals of the 1996 Act. Cross-connects benefit the public interest by allowing CLECs to provide affordable competitive telecommunications services to the end user.

A. Cross-Connects Are “Necessary” and Should Be Required Pursuant to Section 251(c)(6)

Section 251(c)(6) provides the statutory authority required for the Commission to re-establish its rules permitting cross-connects. Section 251(c)(6) states:

Collocation. The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

In *GTE v. FCC*, the D.C. Circuit reversed the Commission’s cross-connect requirement because it determined that the Commission failed to adequately explain its reasoning behind the requirement.¹⁶ The Court stated that the “Commission does not even attempt to show that cross-connects are in any sense ‘necessary for interconnection or access to unbundled network

¹⁶ *GTE v. FCC*, 205 F.3d. 423.

elements.”¹⁷ Although the Commission failed to demonstrate clearly the necessity of cross-connects in the *Advanced Services Order*, it now has the opportunity to make such a showing in this proceeding. This showing should be straightforward because cross-connects are essential to CLEC ability to compete and are plainly “necessary” pursuant to Section 251(c)(6).

As stated earlier, “necessary” equipment for purposes of Section 251(c)(6) should be defined as, “equipment that is used in the provision of telecommunications services, that is technically feasible to be deployed at the ILEC’s premises, and would facilitate CLECs’ ability to compete in their provision of services.” Cross-connects meet all elements of this definition. Cross-connects are used to provide telecommunications transport services. Cross-connects are also technically feasible to be deployed at the ILEC premises. Indeed, the Commission has previously noted that cross-connecting in the ILEC premises is the most efficient means of interconnection between CLECs.¹⁸

Most importantly, cross-connects are critical to a CLEC’s ability to compete. As the Commission recognized in its *Local Competition Order*, prohibiting “collocated carriers from cross-connecting equipment would force carriers to interconnect collocated facilities by routing transmission facilities outside the ILEC’s premises.”¹⁹ CLECs would have to pull substantial lengths of fiber through manholes to be able to connect with other CLECs, when a two-foot long jumper of cable could have been used in the ILEC’s central office.

¹⁷ *Id.*

¹⁸ *Local Competition Order*, at ¶ 592.

¹⁹ *Local Competition Order* at ¶ 594.

Lack of cross-connects would render the ILECs as the only cost effective means of interoffice transport. It would be too prohibitively expensive for CLECs to pull fiber through manholes and the streets at substantial costs to utilize a carrier other than the ILEC for interoffice transport. This would place CLECs at a competitive disadvantage to the ILECs because they will essentially lack any choice for transport from non-ILEC sources. As the Commission recognized in *its UNE Remand Order*, “self provisioning ubiquitous interoffice transmission facilities, or acquiring these facilities from non-incumbent LEC sources, materially increases a requesting carrier’s costs of entering a market or of expanding the scope of its service, delays broad based entry, and materially limits the scope and quality of a requesting carrier’s service offerings.”²⁰

CLECs will be competitively disadvantaged based on time and cost without being able to cross-connect at the ILEC’s premises. CLECs would be forced to either use a monopoly provider for interoffice transport or incur cost-prohibitive expense to use a competitive carrier. This could hardly have been the goal of the 1996 Act. The Collocation requirement was enacted by Congress to facilitate competition, not to ensure the ILECs a monopoly on interoffice transport. Accordingly cross-connects are plainly “necessary” under Section 251(c)(6) of the 1996 Act.

Moreover, cross-connects could be provisioned as a “just, reasonable, and nondiscriminatory term and condition” of physical collocation. CLECs currently pay the ILECs substantially in order to collocate at the ILEC’s premises. As the Commission has recognized and the ILECs have not disputed, it is much more efficient for CLECs to interconnect at the

²⁰ *UNE Remand Order*, at ¶ 321.

ILEC premises then to spend substantial resources digging up streets and routing transmission facilities hundreds of feet to connect to a carrier that is several feet away in the ILEC's central office. Since the CLECs wishing to interconnect have already paid the ILEC for collocation, providing this efficient cross-connection would merely be a just, reasonable and nondiscriminatory term and condition of their collocation arrangements.

B. The Commission Should Order Cross-Connects as a Tariffed Service

The Commission is not limited to evaluating the need for cross-connects under Section 251(c). Indeed, other Sections of the Communications Act permit the Commission to require the ILECs to allow cross-connects pursuant to a tariffed service. The Commission has broad authority to require regulated carriers to provide telecommunications services through tariff offerings. Section 201(a) requires common carriers to furnish telecommunications services upon reasonable request. The Commission has interpreted this section as granting the Commission the authority to require ILECs to provide services to competitors.²¹ Section 251(a)(1) prescribes a general duty on telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Therefore, requiring the ILECs to provide cross-connects as a tariffed service would be consistent with both the ILEC's duty to furnish telecommunications services and their requirement to indirectly interconnect with other telecommunications carriers.

²¹ *Expanded Interconnection with Local Telephone Company Facilities*, Memorandum Opinion and Order, CC Docket 91-141, 9 FCC Rcd 5154, ¶ 19 (1994) ("*Second Expanded Interconnection Order*").

Moreover, the Commission has required tariffed offering of cross-connect services in other contexts. For example, in the *First Expanded Interconnection Order*,²² the Commission required the ILECs to provide special access interconnection services, including cross-connect services, pursuant to tariff offerings. The Commission required that the “LECs implement expanded interconnection by creating new connection charge elements for services they provide to interconnectors.”²³ The Commission required the ILECs to provide these various charges through different connection charge sub-elements in a tariff.²⁴ The Commission confirmed its requirement that the ILECs provide tariffed connection charges in its *Section Expanded Interconnection Order*.²⁵

Accordingly, it is absolutely appropriate and necessary for the Commission to take similar action in this situation by requiring the ILECs to offer cross-connects as a tariffed service. The ILECs should be required to offer several varieties of the cross-connect service. First, the ILECs should be required to offer a cross connect tariffed service, whereby the CLEC would order the cross-connect from the ILEC, who would install and maintain the service. In addition, the Commission should require the ILECs to provide a cross-connect “hosting” service, in which the CLEC is able to place its own cable to cross-connect itself with the desired carrier. This hosting service is necessary because CLECs often face unreasonable delay and costs

²² *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket 91-141, 7 FCC Rcd 7369, ¶120 (1992) (“*First Expanded Interconnection Order*”).

²³ *Id.*

²⁴ *Id.* at ¶121.

²⁵ *Second Expanded Interconnection Order*, at ¶ 73.

associated with ILEC provisioning of optical cables necessary to provide cross-connects.

Requiring the ILEC to provide “hosting” in addition to actually providing the service is permissible pursuant to the Commission’s broad discretion under Sections 201(a) and 251(a)(1).

As required by Section 201(a), the Commission should require that the ILECs price these services reasonably and offer such services to all carriers on a nondiscriminatory basis.

C. The Commission Should Allow Cross-Connects To Be Provisioned As UNEs

In the *UNE Remand Order* the Commission interpreted the “necessary” and “impair” standards for proprietary and non-proprietary UNEs pursuant to section 251(d)(2). The Commission found that a proprietary network element is “necessary” within the meaning of section 251(d)(2)(A) if, “taking into consideration the availability of alternative elements outside the incumbent’s network, including self-provisioning by a requesting carrier or acquiring an alternative from a third party supplier, lack of access to that element would, as a practical, economic, and operational matter, preclude a requesting carrier from providing the services it seeks to offer.”²⁶

The Commission further found that an ILEC’s failure to provide access to a non-proprietary network element “impairs” a requesting carrier within the meaning of section 251(d)(2)(B) if, taking into consideration the availability of alternative elements outside the incumbent’s network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a

²⁶ *UNE Remand Order* at ¶ 44.

requesting carrier's ability to provide the services it seeks to offer.²⁷ The Commission looks at the totality of the circumstances associated with using an alternative in order to evaluate whether there are alternatives actually available to the requesting carrier as a practical, economic, and operational matter. Cost, timeliness, quality, ubiquity, and operational issues associated with use of the alternative are considerations that are used in the evaluation. Moreover, the Commission also considers whether unbundling obligations will further the goals of the 1996 Act, such as the rapid introduction of competition into all markets, the promotion of facilities-based competition, investment, and innovation, will reduce regulation, provide certainty in the market, and whether the unbundling obligations will be administratively practical for the Commission to apply.

Based on its "impair" standard, the Commission should establish a collocated carrier-to-carrier cross-connects UNE.²⁸ Because cross-connects link carrier networks for the exchange of traffic, cross-connects would not be considered proprietary, and should be evaluated under the "impair" standard rather than the "necessary" standard. Cross-connects provide vital links to other collocated competitive carriers and would be unduly burdensome to provision outside of the ILEC's premises. Because many CLECs are collocated at the ILEC's premises, failing to require ILECs to offer cross-connects would require CLECs to either only interconnect with the ILEC or incur substantial additional costs to connect with other collocated CLECs outside of the ILEC's premises. This would significantly diminish a CLEC's ability to provide services because it would limit CLEC options and increase costs.

²⁷ *UNE Remand* at ¶ 51.

²⁸ This comports with the practice in Texas, where dark fiber cross-connects are a UNE under the T2A agreement.

Moreover, cross-connects, between collocators, satisfy the definition of the Commission's existing dedicated transport and inside wiring UNEs. "Dedicated transport" is defined as ILEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by ILECs or requesting telecommunications carriers, or between switches owned by ILECs or requesting telecommunications carriers.²⁹ Access to ILEC-provided cross-connections over existing cable routes within an ILEC premises, which often contain multiple wire centers, satisfies the existing definition of dedicated transport. Because it fits within this existing definition, cross-connections, like dedicated transport, also should be found to be a UNE.

Similarly, cross-connects also fit the definition of another already declared UNE, inside wiring. Inside wire is defined as all loop plant owned by the incumbent LEC on end-user customer premises as far as the point of demarcation, including the loop plant near the end-user customer premises. Under the Commission's rules, carriers may access the inside wire subloop at any technically feasible point including, but not limited to, the network interface device, the minimum point of entry, the single point of interconnection, the pedestal, or the pole. Access to an ILEC provisioned cross-connect over existing cable routes within a central office is essentially similar, providing additional justification for the Commission to establish a cross-connect UNE.

²⁹ *UNE Remand Order* at ¶ 322 (citing *Local Competition Order* at ¶ 440).

III. REMOTE TERMINALS

A. The Commission Should Modify Its Collocation Rules To Facilitate Subloop Unbundling At Remote Terminals

The Commission should modify its collocation rules to facilitate subloop unbundling at remote terminals. Subloops are the portions of the loop that can be accessed at terminals in the ILEC's outside plant.³⁰ An accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing the splice case to reach the fiber within.³¹ Collocation at the remote terminal is essential for CLECs to be able to access the subloop and is mandated by the 1996 Act. Section 251(c)(3) requires ILECs to provide access to unbundled elements "at any technically feasible point."³² The Commission has concluded that subloops are not a proprietary network element.³³ Lack of access to unbundled subloops at technically feasible points on an incumbent's loop plant would impair a competitor's ability to provide advanced telecommunications services and serve as a barrier to competition.

B. Collocation of Multifunctional Equipment At Remote Terminals Is Necessary For Interconnection, Access To UNEs And The Provision Of Advanced Services

As ILECs begin to use evolving technologies such as digital loop carriers (DLC) and integrated digital loop carriers (IDLCs), collocation at remote terminals is necessary in order for facilities based carriers to deploy advanced telecommunication services. CLECs that wish to deploy xDSL need to access subscriber copper loops. A remote terminal is a technically feasible

³⁰ *UNE Remand Order* at ¶ 206.

³¹ *Id*

³² 47 U.S.C. § 251(c)(3).

³³ *UNE Remand Order* at ¶ 208.

point on an ILEC's network where CLECs can access copper loops in order to deploy xDSL.

CLECs need access to unbundled subloops in order to compete for and serve end users currently served by IDLC loops. In order for CLECs to deploy self-provisioned xDSL it must access the copper loop before it is multiplexed by the ILEC and transported to the central office over digital loop carrier (DLC) facilities. Generally, CLECs cannot access IDLC loops at the central office. In order to reach IDLC subscribers, competitors need access to these loops before the traffic is multiplexed. In this instance, remote terminals provide a technically feasible point for competitors to access IDLC loops. As the Commission noted in the *UNE Remand Order* "denying access at this point would preclude a requesting carrier from competing to provide service to customers served by an ILEC's IDLC facilities."³⁴

Moreover, access to unbundled subloops at the remote terminal is consistent with the competitive goals of the 1996 Act and is critical to CLEC provisioning of advance services. As network architecture evolves, remote terminals have gained increased importance to incumbents, affiliates and competitors. The Commission should modify its collocation rules to facilitate subloop unbundling at the remote terminals.

C. Space Exhaustion and Remote Terminals

There are three types of remote terminals: 1) cabinets, 2) controlled environmental vaults, and 3) controlled environmental huts.³⁵ ILECs should be required, where technically feasible, to expand remote terminals by: 1) clearing out obsolete equipment, 2) expanding available space

³⁴ *Id.* at note 418.

³⁵ Controlled environments protect electronic devices such as DSLAMs. Vaults are located below ground and huts are located above ground.

allocated for collocation and 3) allowing adjacent collocation and interconnection to the ILEC's remote terminal. ILECs should be required to deploy larger cabinets and build more space in controlled environmental vaults and huts. ILECs should also be required to permit construction of adjacent structures to house CLEC equipment. Adjacent construction is essential to competition and will not unduly burden ILECs. In instances where adjacent structures have to be constructed, CLECs will be responsible for obtaining all required licenses and/or permits required by local and state authorities for construction and resolving all zoning and rights-of-way issues. Due to space limitations within cabinets, ILECs should be required to allow competitor equipment within the same racks or bays as ILEC equipment. In addition, the Commission should establish national space reservation rules for remote terminals.

D. The Commission Should Modify Its Collocation Rules To Permit Physical Collocation At Remote Terminals Even When Space Is Available At The Central Office

Section 251(c)(6) provides for physical collocation "at the premises of the incumbent local exchange carrier"³⁶ In its recent *Collocation Reconsideration Order*, the Commission expanded its definition of premises.³⁷ The Commission's current collocation rules require ILECs to provide collocation in adjacent controlled environmental vaults or similar structures, where technically feasible, when space is legitimately exhausted. Based on the Commission's

³⁶ 47 U.S.C. section 251 (c)(6).

³⁷ [P]remises includes all buildings and similar structures owned, leased, or otherwise controlled by the incumbent LEC that house its network facilities, all structures that house incumbent LEC facilities on public rights-of-way, and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these structures." *Collocation Reconsideration Order*, at ¶ 44.

definition of premises, competitors should be permitted to collocate at remote terminals even when space is available within a nearby central office. Nothing in the Act or the Commission's definition restricts premises to an ILEC's central office. Focal requests that the Commission modify its collocation rules to require ILECs to permit physical collocation at remote terminals even when space is available within a nearby central office.

IV. THE COMMISSION SHOULD MODIFY ITS RULES TO INCORPORATE NEW TECHNOLOGICAL DEVELOPMENTS

In the Collocation Reconsideration Order and NPRM, the Commission requested comments on whether the ILEC deployment of new network architectures, including the installation of fiber deeper into the neighborhood, requires modification to the Commission's rules concerning access to unbundled transport, loops and subloops. The Commission's inquiry is very timely and important. As the Commission recognizes, to respond to CLEC provision of advanced services, ILECs are currently investing in new technologies and upgrading their networks by installing fiber transmission facilities and advanced electronics in the loop facility. Indeed, SBC has well publicized its Project Pronto initiative, in which it "plans to invest more than \$6 billion over the next three years in fiber, electronics and ATM technology in order to create a robust, comprehensive, data-centric broadband network architecture."³⁸

While the Commission should applaud technological innovation, they should take this opportunity to ensure that the ILECs' new initiatives are used to promote further competition and innovation and not as a vehicle to preclude CLECs from providing broadband services. Focal is concerned that SBC may use Project Pronto as a means for quelling competition in the advanced

³⁸ See SBC Press Release, at 1.

services market. Although SBC offered a number of voluntary commitments that the Commission approved in the *Project Pronto Order*, those conditions will likely not be sufficient to ensure robust competition. The Commission should use this opportunity to further strengthen its rules with regard to next generation architectures and apply these rules to all ILECS.

A. The Commission Should Redefine the Loop UNE to Include Advanced Services Electronics

ILEC deployment of next generation architecture requires the Commission to reconsider the definition of the loop network element. The Commission must assure that advanced services electronics and capabilities are included within the definition of the loop. In the *UNE Remand Order*, the Commission defined the loop as a network element that includes “all features, functions and capabilities of the transmission facilities, including dark fiber and attached electronics (except those used for the provision of advanced services, such as DSLAMs) owned by the incumbent LEC, between an incumbent LEC’s central office and the loop demarcation at the customer premises.”³⁹ The ILEC deployment of new technologies in general, and SBC’s waiver of the SBC/Ameritech merger conditions in particular, require modification of the loop network element.

The Commission’s *Project Pronto Order*⁴⁰ permits SBC to own combinations of POTS/ADSL line cards located in remote terminals and optical concentration devices (“OCDs”)

³⁹ *UNE Remand Order*, at ¶167.

⁴⁰ *Ameritech Corp. and SBC Corp., for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310 (d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission’s Rules*, Second Memorandum Opinion and Order CC Docket No. 98-141, ASD File No. 99-49 (rel. Sep. 8, 2000) (“*Project Pronto Order*”).

located in central offices. SBC's waiver request demonstrates the integral nature of both the line cards and the OCDs to the loop, and therefore, both should be included within the definition of the loop network element.

Line card/plug combinations must be included within the definition of the loop. As the Commission noted in the *Project Pronto Order*, line cards are multifunctional equipment that have both POTs and DSLAM capabilities as well as a splitter functionality.⁴¹ The digital loop carriers ("DLCs") being deployed by SBC and other ILECs are not used solely for the provision of advanced services, but are used to provide both voice and data. Therefore, the same rationale for excluding DSLAMs from the definition of the loop network does not exist with regard to the line card/plug combinations.

Moreover, line card/plug combinations should be included within the definition of the loop, because exclusion of such technologies would limit the functionality of the loop and therefore, the services the CLEC could provide. The Commission, in its *UNE Remand Order*, noted that multiplexing devices should be included within the definition of the loop network element, "because excluding such equipment . . . would limit the functionality of the loop."⁴² Because the same issue is present with regard to line card/plugs, such technology should also be included in the loop.

Moreover, OCDs should be included within the definition of the loop network element. SBC will use OCDs as an ATM switch and in conjunction with the plug-in cards to provide advanced services. However, under SBC's proposed network configuration in Project Pronto,

⁴¹ *Project Pronto Order*, at ¶ 14.

⁴² *UNE Remand Order*, at ¶ 175.

the ATM switches will be “the only means by which the ADSL traffic of multiple CLECs can be aggregated and disaggregated.”⁴³ The OCD will, therefore, be the only feasible point at which CLECs can obtain access to the ATM’s bit streams flowing from their customers. Accordingly, it is essential that CLECs obtain access to the OCD functionality, and the Commission should include such functionality within the definition of the loop network element.

B. CLECs Should be Permitted to Provision Their Own Line Cards

The Commission should require SBC and other ILECs to permit CLECs to provision their own line cards at the ILEC remote terminals. At this time, SBC limits CLECs to line cards that are already deployed by SBC in its remote terminals and does not permit CLECs to install their own line cards.

This current environment limits the competitive opportunities available to the public and should be remedied by the Commission. The particular line cards utilized by SBC limit the type of xDSL “flavors” a carrier may provide. Accordingly, SBC would have the ability to eliminate real competition by confining CLECs to the “flavors” of xDSL provided by SBC. This result would be contrary to the public interest and should not be permitted to continue. The Illinois Commerce Commission (“ICC”) recently required Ameritech to install plug-in cards which support all DSL-based services required by the CLEC, even if the technology is not provided by Ameritech itself.⁴⁴ The Commission should follow the ICC’s lead and require ILECs to permit

⁴³ CC Docket 98-141, *Ex Parte* Letter from DSL Access Telecommunications Alliance to Carol Matthey, at p.4 (April 11, 2000).

⁴⁴ *Covad Communications Company Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech, and for an*

CLECs to deploy their own plug-in cards to avoid limitations on the services CLECs can provide to their customers.

C. The Commission Should Establish New UNEs

The deployment of new technologies such as the DLC systems require the Commission to establish new UNEs in order to ensure that CLECs are not precluded from accessing the full functionality of the new equipment. Because access to such equipment is necessary to ensure that CLECs are not, as a practical, economic or operational matter precluded from providing services, the new technologies qualify as a UNE pursuant to the Commission's *UNE Remand Order*.

For example, some ILECs are beginning to deploy dense wavelength division multiplexing ("DWDM"), which provides increased capacity by splitting fiber into multiple wavelengths. This technology will likely be revolutionary in a marketplace in which bandwidth is becoming more valuable and scarce. DWDM will allow carriers to split fiber into multiple channels that can then be used by different carriers. Each wavelength is completely isolated from the others, creating a discrete channel.

The Commission should require ILECs to offer each optical wavelength as a separate UNE. Because DWDM equipment divides each wavelength into a discrete channel, the Commission should require the ILECs to provide each wavelength as a separate UNE. This would increase efficiency and preserve bandwidth because carriers could purchase smaller increments of bandwidth if it so desires. This result would be consistent with the Commission's

decision to unbundle the high frequency portion of the loop in the *Line Sharing Order*.⁴⁵ Like the high frequency portion of the loop, each optical wavelength is a “capability” of that loop, which would meet the definition of a network element. Moreover, like the Commission’s determination in the *Line Sharing Order*, failure to unbundle each optical wavelength of a loop would unfairly disadvantage the competitor.⁴⁶ While the ILEC would have the capability to utilize various wavelengths of the loop, CLECs would be required to purchase the entire loop each time it needed bandwidth. This would subject CLECs to greater costs and inefficiencies.

The Commission should also require Constant Bit Rate (“CBR”) to be provided as a UNE. CBR is a data service in which bits are conveyed regularly in time and at a constant rate. CBR ensures quality of service in the transmission of multimedia type products. Because products such as videoconferencing and voice over IP are sensitive to bandwidth delay, carriers need to have access to technology that assures steady bandwidth transmission, which CBR provides. Although SBC has voluntarily agreed to make CBR available to CLECs, the Commission should mandate this duty for all ILECs by confirming that CBR is a UNE.

Finally, the Commission should classify SBC’s or any ILEC’s broadband service offering as a UNE. Pursuant to the *Project Pronto Order*, SBC adopted a number of “voluntary commitments.” One of those commitments was to provide access to a “broadband service

⁴⁵ *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912, at ¶17 (1999) (“*Line Sharing Order*”).

⁴⁶ *Line Sharing Order*, at ¶ 33.

offering.”⁴⁷ Although SBC promised to price the service pursuant to the Commission’s pricing rules, the service would not be classified as a UNE and would therefore, not be subject to Sections 251 and 252 of the 1996 Act. As ALTs explained in an *ex parte* letter to the Commission, such a situation would hinder competition.⁴⁸

SBC’s Broadband service would be immune to the requirements of Sections 251 and 252 of the 1996 Act. CLECs would be unable to challenge SBC’s pricing or terms and conditions on which the broadband service is provided, because the broadband service would not be subject to the arbitration provisions of Section 252. In the SBC Project Pronto scenario, CLECs would be forced to act as straight resellers of SBC’s broadband service offering. Thus, the Commission should clarify that the broadband service offering is a UNE and subject to the pro-competitive provisions of the 1996 Act.

D. The Commission Should Require the ILECs to Disclose Where They are Deploying Fiber in the Loop

For CLECs to be able to create appropriate network deployment plans and determine the types of equipment to purchase, it is essential that CLECs have access to the ILEC fiber deployment plans. Currently, CLECs are hindered in their planning ability because ILECs and their vendors have not fully disclosed where they plan to deploy fiber in the loop and the capabilities of the equipment they expect to deploy.

⁴⁷ CC Docket No. 98-141, Letter from Priscilla Hil-Ardoin, Senior Vice President SBC Telecommunications, Inc. to Magalie R. Salas, Secretary of the FCC, SBC Voluntary Commitments at page 2 (August 2, 2000) (“*SBC Commitments Letter*”).

⁴⁸ CC Docket No. 98-141, Letter from Jonathan Askin, General Counsel, Association for Local Telecommunications Services, to Magalie Roman Salas, Secretary of the FCC at page 2-4 (July 21, 2000).

In the *Project Pronto Order*, the Commission required SBC to post on its website, manufacturers' description of the equipment utilized to provide the broadband service.⁴⁹ Although that requirement is a start, it is likely that CLECs will need access to additional information in order to determine the capabilities inherent in the equipment the ILECs deploy. Accordingly, the Commission should require the ILECs to give CLECs at least 12 months advance notice of a planned rollout where they will be deploying fiber loop facilities. Moreover, the Commission should require ILECs to disclose the full range of capabilities of all the deployed equipment, including inactivated capabilities.

E. The Commission Should Require ILECs to Maintain Spare Copper

The Commission notes that as part of ILEC plans to upgrade their networks, some ILECs may overlay their existing copper facilities with fiber facilities and install DLC equipment in remote terminals. These copper facilities represent unused loop capacity that is already installed and capable of providing service. The Commission must ensure that these copper facilities are maintained in such a manner to provide a viable alternative for CLECs to access customers.

Because of ILEC resistance to permitting CLECs to collocate at remote terminals, CLECs are already having problems accessing customers in suburban and rural neighborhoods. Permitting ILECs to retire existing copper facilities would essentially preclude competition in all but the most concentrated urban centers. Accordingly, the Commission must require that ILECs maintain existing copper loops.

As the Commission concluded in its *UNE Remand Order*, "unused loop capacity that ILECs keep dormant, but ready for service, like dark fiber, is included within the definition of

⁴⁹ *Project Pronto Order*, at ¶ 44.

the loop and must be unbundled pursuant to Sections 251(d)(2) and 251(c)(3).”⁵⁰ Like dark fiber, the replaced loop plant must be maintained in order to ensure that CLECs continue to have access to loops for the provision of advanced services.

SBC also recognized the importance of maintaining copper pairs. In response to the *Project Pronto Order*, SBC committed to a number of restrictions to its ability to retire copper loops.⁵¹ However, these voluntary commitments need to be strengthened and applied to all ILECs. ILECs should be required to maintain copper facilities for a period of at least ten years. This transition time is necessary to ensure that CLECs have the ability to adequately finance and implement business plans. If an ILEC desires to retire copper plant prior to the ten-year timeframe, the ILEC should be required to obtain Commission approval and demonstrate that the plant retirement would not competitively disadvantage CLECs. Such requirements are essential to ensuring that CLECs have available resources to permit them to provide advanced services in competition with the ILECs.

V. CONCLUSION

For the foregoing reasons Focal requests that the Commission strengthen its collocation rules by: 1) adopting a definition of “equipment necessary for interconnection” that allows the collocation of multi-functional equipment, 2) permitting CLECs to self-provisioned cross-

⁵⁰ *UNE Remand Order*, at ¶ 174.

⁵¹ *Project Pronto Order*, at ¶ 39. SBC committed to: (1) refrain from retiring any copper pairs for one year; (2) refrain from retiring (over a three-year period) more than 5% of the copper pairs terminated on the Main Distribution Frames of its incumbent LEC’s central offices; (3) disclose the incumbent LEC’s general decision-making criteria for retiring any copper plant; (4) notify competitive LECs of SBC’s intent to retire any copper plant at least 180 days before such

connects, and 3) allowing collocation at remote terminals. In addition, the Commission should modify its rules to incorporate new technological developments.

Respectfully Submitted,

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retirement; and (5) provide unaffiliated entities an opportunity to buy any copper plant marked for retirement at net book value or the highest competitive bid, whichever is higher.